IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1021 (MS) OF 2006

U.P.S.R.T.C. (now known as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Bhagwant Chandra Pant, S/o late Krishna Nand Pant, R/o Shish Mahal, Colonel Ward, P.O. Kathgodam, Tehsil Haldwani, District-Nainital.
2. Presiding Officer, Industrial Tribunal Haldwani, Nainital. .....Respondents.

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WRIT PETITION NO. 1022 (MS) OF 2006

U.P.S.R.T.C. (now known as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Sri Bansi Lal,
   S/o Sri Gopi Chand,
   160 Roadways Colony, Dehradun.
2. Presiding Officer, Labour Court, Dehradun.

.....Respondents.

WRIT PETITION NO. 1023 (MS) OF 2006

U.P.S.R.T.C. (now known as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Kundan Singh, S/o Late Nar Singh,
   R/o Chinapur, P.O. Haripur Nayak, (Kusumkhera Haldwani), District-Nainital.
2. Presiding Officer, Industrial Tribunal Haldwani,
   Nainital. .....Respondents.

&

WRIT PETITION NO. 1024(MS) OF 2006

U.P.S.R.T.C. (now known as)
Uttaranchal Transport Corporation,
Through its Regional Manager, Kumaon Region,
Nainital, District Nainital. .....Petitioner.

Versus

1. Smt. Prema Devi, W/o late Gautham Uniyal, R/o Village Dhalwala, P.O. Muni Ki Reti, District Tehri Garhwal.
2. Presiding Officer, Labour Court, Dehradun.

.....Respondents.

Dated: 03.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri A.N. Sharma and Sri C.K. Sharma, Advocate for the petitioner and Standing counsel for the respondent no.2.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 28th March, 2005 (Annexure No. 4 to the writ petition).

Briefly stated, respondent/ workman has filed a claim petition under Section 33 (c) (2) of the Industrial Disputes Act before the Presiding Officer, Labour Court, Haldwani claiming difference of leave encashment arrears arising out of recommendation of 5th Pay Commission. The claim of the respondent /workman was opposed by the U.P.S.R.T.C. by filing a written statement.

The Labour Court on different dates allowed the claim of the respondent/ workman. The aforesaid order passed by the labour Court was challenged before this Hon'ble Court in writ petitions. In writ petitions following directions were given:-

"Learned counsel for the petitioner has submitted that according to the direction of the government order dated 24th February, 1999, the fixation of the salary of the employees of the petitioner corporation has been determined by the petitioner corporation but the payment thereof since 01.01.1996to 31.12.1998 has not been made so far, but as soon as the financial position of the petitioner corporation improves or it receives financial assistance from the State Government and direction regarding carving out the plan for the payment thereof, the same shall be made accordingly. The salary as revised according to the implementation of recommendation of the Vth Pay Commission is being paid to the employees of the petitioner corporation since 01.01.1999. In spite of the acute financial crisis the petitioner corporation is making payment according to a plan carved out vide its

resolution No. 2553/99 and therefore issued vide Head Quarters Circular No. 186 CENT/G/99/592 Nigam/97, dated 05.03.1999.

It has further been submitted that the Dehradun region of the petitioner corporation has already paid a sum of Rs. 2,13,86,675.00 to its employees.

Both the parties have agreed that in view of the above, they will consider to clear all the dues by passing the appropriate order for the payment with effect from 1st January, 1996 as per Govt. Order dated 24.02.1999, which was adopted by the policy decision of the U.P.S.R.T.C."

In pursuance of the aforesaid order, labour Court has considered the maintainability of the application under Section 33 (c) (2) of the Industrial Disputes Act in favour of the workman. However, in Misc. Case No. 120 of 2002, the Presiding Officer labour Court has passed the order to the following effect:-

> "श्रमिक द्वारा अपने प्रार्थना पत्र में अवशेष वेतन एरियर रू0 20110/— जनवरी 99 से फरवरी 99 तक का वेतन निर्धारण एरियर 1744/— प्रर्थनापत्र के संलग्नक के क्रमांक 3, 4, 5, 6, 7 में महँगाई भत्ते का एरियर 6631/— क्रम 8 में अर्जित अवकाश का नगदीकरण 36179/— तथा तथा क्रमांक 10, 11, 12, 13, 14 का अतिकाल भत्ता रू0 1603/—कुल रूपया 66267.00 की मांग की गई है जिसमें से वाद के विचाराधीन रहते हुए वाद पत्र के संलग्नक के क्रम 2 में वर्णित वेतन निर्धाण एरियर रू0 1744/— में से रू0 320/—, संलग्नक के क्रम 2, 4, 5, 6, 7 का पूर्ण भुगतान तथा संलग्नक के क्रम 6,10,11,12,13,14 अर्जित अवकाश का नगदीकरण 28529/— तथा अतिकाल भत्ता रू0 75 कुल रूपया

57692/–की मांग की गयी है जिसमें से वाद के विचाराधीन रहते हुए श्रमिक द्वारा रू0 4953/– प्राप्त होना स्वीकार किया है, जबकि सेवायोजक साक्षी के अनुसार श्रमिक का जनवरी व फरवरी 99 का एरियर भुगतान किया जाना कहा गया है और भुगतान रजिस्टर मूल रूप से न्यायालय में प्रस्तुत किया जायेगा कहा गया है किन्तु वह प्रस्तुत नहीं किया गया। शेष वाद पत्र के क्रम 3,4,5,6,7 का भुगतान होना कहा गया है जो श्रमिक को भी स्वीकार है। इस प्रकार श्रमिक को वेतन एरियर के रूप में रू0 28529/– तथा अतिकाल भत्ते के रूप में रू0 75/–कुल रूपया 52839/– की मांग संगणना हेतु स्वीकार की जाती है। सेवायोजकों को यह अधिकार होगा कि यदि उनके द्वारा सम्बन्धित श्रमिक को माह जनवरी वह फरवरी 99 का एरियर रू0 1868/– वास्वत में श्रमिक को भुगतान कर दिया गया है, तो वह उसका सामायोजन संगणित धनराशि का भुगतान दो माह के अन्दर करे, अन्यथा श्रमिक आदेश की तिथि से देय धनराशि पर भविश्य में 6 प्रतिशत ब्याज भी प्राप्त करने का अधिकारी होगा। तद्नुसार वादी को देय धनराशि की संगणना की जाती है।''

Counsel for the petitioner has referred the judgment of Apex Court passed in Special Leave to Appeal NO. 2229 of 2006, where the similar controversy arose and the following order was passed:-

"*Delay condoned.*

Issue notice.

There shall be interim stay."

In view of the aforesaid, the order passed by the Chairman Labour Court shall be complied with by depositing half of the amount and the same shall be paid to the workman

after the satisfaction of the Presiding Officer in two instalments on the duration of two months. The rest of the half shall be paid in two instalments. However, intire payment shall be subject to the final decision in Special Leave to Appeal if the subject matter is the same.

Subject to the aforesaid, writ petitions are disposed of. No order as to costs.

(Rajesh Tandon, J.)

03.08.2006
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